

ESTTA Tracking number: **ESTTA259387**

Filing date: **01/08/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187525
Party	Plaintiff Mr.LyvonDavis
Correspondence Address	Gordon G. Waggett GORDON G. WAGGETT, P.C. 550 Westcott Street, Suite No. 350 Houston, TX 77007-5099 UNITED STATES gordon@waggettlaw.com
Submission	Motion for Default Judgment
Filer's Name	Gordon G. Waggett
Filer's e-mail	gordon@waggettlaw.com
Signature	/Gordon G. Waggett/
Date	01/08/2009
Attachments	MotionForDefaultJudgment8Jan09.pdf (4 pages)(37437 bytes) Exhibit_1_MotionForDefaultJudgment_8Jan09.pdf (4 pages)(44266 bytes) Exhibit_2_MotionForDefaultJudgment_8Jan09.pdf (2 pages)(126506 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF APPLICATION

Mark: SLABCULTURE
Applicant: Lee Bell, an individual U.S. Citizen
Serial No.: 76/690,508
Filing Date: June 12, 2008
Filing Basis: 1A (Claimed dates of first use anywhere/in commerce May 1, 2008)
Published: *Official Gazette* of November 4, 2008

Lyvon Davis,		§	
	Opposer,	§	
v.		§	Opposition No. 91187525
Lee Bell,		§	
	Applicant.	§	

MOTION FOR DEFAULT JUDGMENT

Pursuant to 37 C.F.R. §§ 2.106(a), Fed. R. Civ. P. 55(a) and TBMP §§ 312, 508 Plaintiff/Opposer, Lyvon Davis moves for entry of default judgment against Defendant/Applicant Lee Bell and in support of the granting of such motion shows the following:

1. Plaintiff/Opposer, Lyvon Davis (d/b/a SLAB CULTURE), a U.S. citizen residing at 716 E. 32nd Street, Houston, Texas 77022 (hereinafter “Opposer”), believes that he will be damaged by registration of the mark shown in the above-identified application and hereby opposes the same for the reasons set out in his Notice of Opposition (the “Notice”) filed with the Trademark Trial and Appeal Board (“TTAB”) on November 10, 2008.

Opposition No. 91187525
Serial No.: 76690508
Mark: SLABCULTURE

2. On information and belief, Defendant/Applicant Lee Bell, is an individual U.S. Citizen having a place of residence indicated of record in the opposed application as being 11526 Heathermill Drive Houston, Texas 77066 (“Applicant”).

3. Applicant is represented by counsel. In Applicant’s above-referenced application, Applicant appointed an attorney of record to, *e.g.*, prosecute the application and to transact all business in connection therewith. This appointed counsel of record is Cheryl Irvin, Irvin Law Firm, 917 Franklin Street, Suite No. 400, Houston, Texas 77002-174, (713) 222-7200 (*see* the copy of the opposed application attached as Exhibit B to the Notice). Additionally, in the Applicant’s above-referenced application, Applicant directed that all correspondence be directed to the attention of his counsel of record (*see* Exhibit B to the Notice). To present, Cheryl Irvin remains of record as Applicant’s counsel of record¹.

4. On November 10, 2008, Opposer filed the Notice with the TTAB.

5. Also on November 10, 2008, the Notice of Opposition was served on Applicant by mailing a true and complete copy of it to Applicant’s trademark application counsel of record at the correspondence address of record in the Office, namely: Cheryl Irvin, Irvin Law Firm, 917 Franklin Street, Suite No. 400, Houston, Texas 77002-174 by U.S. first-class mail, postage prepaid as indicated in the Certificate of Service set out in the Notice. Opposer respectfully submits that this service by U.S. first-class mail was effective as Opposer has not received any notice or other indication that such first-class mail piece has been returned.² According to

¹ *See* TARR Status Page for the opposed application printed January 8, 2009, attached hereto as Exhibit 1.

² Attached as Exhibit 2 is a true and correct photocopy of this mail piece bearing the U.S. first-class postage along with a copy of the receipt from the UPS Store where counsel for Opposer paid for and deposited such mail piece (at about mid-day on November 10, 2008) containing such service copy of the Notice.

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USPTO records, neither the Applicant nor Applicant's counsel of record has filed any notice of change of address nor has Applicant filed any revocation of power of attorney³. As such, Opposer respectfully submits that such service of the Notice of Opposition by U.S. first-class mail, postage prepaid on the Applicant's counsel of record's address was effective, and that such service satisfied the rules.⁴

6. The Board's February 14, 2008 institution order (which was mailed to Applicant at the address of record in the Office for Applicant's counsel of record) designated December 27, 2008 as the date an answer was due from Defendant/Applicant. December 27, 2008 was a Saturday; therefore, the date for a timely answer would have been Monday, December 29, 2008, the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday. 37 C.F.R. § 1.7; see also Trademark Rule 2.196.

7. Defendant/Applicant has not filed (or served) any answer or other responsive pleading as required by the institution order, nor has Defendant/Applicant timely requested an extension of time to file an answer. Consequently, pursuant to 37 C.F.R. §§ 2.106(a), Fed. R. Civ. P. 55(a) and TBMP §§ 312, 508, Defendant/Applicant is in default, the allegations of Plaintiff's Notice of Opposition are deemed to be admitted, and Plaintiff/Opposer is entitled to judgment on its Notice of Opposition.

³ See footnote 1, Exhibit 1.

⁴ 37 C.F.R. §§ 2.119(b)(4). The undersigned has no information upon which to believe that the record address has changed and has no knowledge of any alternate correspondence address. Counsel for Opposer previously successfully sent U.S. first-class certified mail to Applicant's counsel of record at the record address and also previously communicated by telephone with Applicant's counsel of record via the telephone number of record (*see* evidence of this noted in Paragraph 47 and related Exhibit I of the Notice). Also, the Applicant's counsel of record's address of record was used by the Board in communicating a copy of the Board's institution order in the instant opposition. Further, the USPTO mailed the Notice of Publication to Applicant's counsel of record at the address of record in the Office (*see* Exhibit B of the Notice).

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WHEREFORE, Plaintiff/Opposer Lyvon Davis prays for an Order granting this motion, entering judgment in favor of Opposer and against Applicant, sustaining this Notice of Opposition and refusing registration of the mark that is the subject of the Applicant's above-captioned application, and for such other relief as may be proper.

Dated: January 8, 2009

Respectfully submitted,

/Gordon G. Waggett/

By: _____

Gordon G. Waggett, Esq.
GORDON G. WAGGETT, P.C.
550 Westcott Street, Suite No. 350
Houston, Texas 77007-5099
Tel: (713) 961-4641
Fax: (713) 223-1476
Email: gordon@waggettlaw.com

**ATTORNEY FOR OPPOSER
LYVON DAVIS**

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **MOTION FOR DEFAULT JUDGMENT** has been served on Applicant, Mr. Lee Bell, by mailing said copy on January 8, 2009, via First Class Mail, postage prepaid to Applicant's counsel of record at the correspondence address of record in the Office:

Cheryl Irvin
Irvin Law Firm
917 Franklin Street, Suite No. 400
Houston, Texas 77002-1741

Dated (signature and service): January 8, 2009

/Gordon G. Waggett/

Gordon G. Waggett, Esq.
**ATTORNEY FOR OPPOSER
LYVON DAVIS**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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IN THE MATTER OF APPLICATION

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		§	
Lee Bell,		§	
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Opposer's Motion for Default Judgment
EXHIBIT 1

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2009-01-08 11:05:03 ET

Serial Number: [76690508 Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

SLABCULTURE

(words only): [SLABCULTURE](#)

Standard Character claim: [Yes](#)

Current Status: [An opposition is now pending at the Trademark Trial and Appeal Board.](#)

Date of Status: [2008-11-17](#)

Filing Date: [2008-06-12](#)

Transformed into a National Application: [No](#)

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 105](#)

Attorney Assigned:
[JENKINS JR CHARLES L](#)

Current Location: [650 -Publication And Issue Section](#)

Date In Location: [2008-09-30](#)

LAST APPLICANT(S)/ OWNER(S) OF RECORD

1. [Bell, Lee](#)

Address:

[Bell, Lee](#)
[11526 Heathermill Drive](#)
[Houston, TX 77066](#)
[United States](#)

Legal Entity Type: [Individual](#)
Country of Citizenship: [United States](#)
Phone Number: [713-222-7200](#)

GOODS AND/ OR SERVICES

International Class: [025](#)
Class Status: [Active](#)
[Clothing, namely, hats, t-shirts and pants](#)
Basis: [1\(a\)](#)
First Use Date: [2008-05-01](#)
First Use in Commerce Date: [2008-05-01](#)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

- [2008-11-17 - Opposition instituted for Proceeding](#)
- [2008-11-17 - Opposition papers filed](#)
- [2008-11-04 - Published for opposition](#)
- [2008-10-15 - Notice of publication](#)
- [2008-09-30 - Law Office Publication Review Completed](#)

2008-09-30 - Assigned To LIE

2008-09-22 - Approved for Pub - Principal Register (Initial exam)

2008-09-20 - Assigned To Examiner

2008-06-24 - Application Filing Receipt Mailed

2008-06-19 - New Application Entered In Tram

ATTORNEY/ CORRESPONDENT INFORMATION

Attorney of Record

Cheryl Irvin

Correspondent

CHERYL IRVIN

Irvin Law Firm

917 FRANKLIN ST STE 400

HOUSTON, TX 77002-1741

Phone Number: (713) 222-7200

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		§	
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Opposer's Motion for Default Judgment
EXHIBIT 2

The UPS Store - #4340
5535 MEMORIAL DR
STE F
HOUSTON, TX 77007
(713) 868-1003

11/10/08 12:20 PM

We are the one stop for all your
shipping, postal and business needs.

We offer all the services you need
to keep your business going.



001 000008 (022) TO \$ 5.20
Priority Mail

SubTotal \$ 5.20
Total \$ 5.20

American Express \$ 5.20

ACCOUNT NUMBER * ***** [REDACTED]

Receipt ID 83090869370135888815 001 Items
CSH: RUSSELL Tran: 4619 Reg: 001

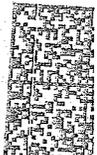
Whatever your business and personal
needs, we are here to serve you.

US Postal Rates Are Subject to Surcharge

D10-TM-001 US
Postage for mailing
SLAB CULTURE Notice of Opposition
Service Copy

Ms. Cheryl Irvin
Irvin Law Firm
917 Franklin Street, Suite No. 400
Houston, Texas 77002-1741

GORDON G. WAGGETT, P.C.
Intellectual Property Law
G&B
SUITE NO. 350
550 WESTCOTT STREET
HOUSTON, TEXAS 77007-5099



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0004180213
\$ 005.20
NOV 10 2008
MAILED FROM ZIP CODE 77007
PINNEY BOWES